

**REMARKS**

The Examiner rejected claims 1-88 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

The Examiner rejected claims 1-16, 21-24, 29, 37-42, 47, 51-57, 63-66, 71, and 81-83 under 35 U.S.C. §102(b) as being anticipated by Monroe *et al.* (U.S. Pat. 3,884,218).

The Examiner rejected claims 26-28, 30, 35-36, 44-46, 48-50, 62, 68-70, 72, 77-78, and 87-88 under 35 U.S.C. §103(a) as being unpatentable over Monroe *et al.* (U.S. Pat. 3,884,218) in view of Scarfoss, III (Pub. No. US 2003/0231495 A1).

The Examiner rejected claims 19-20 and 60-61 are rejected under 35 U.S.C. §103(a) as being unpatentable in view of Monroe *et al.* (U.S. Pat. 3,884,218) in view of Monroe *et al.* (U.S. Pat. 5,356,368).

The Examiner stated that claims 17-18, 25, 31-34, 43, 58-59, 67, 73-76, 79-80, and 84-86 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, and to include all of the limitations of the base claim and any intervening claims.

**35 U.S.C. §112**

The Examiner stated that claims 17-18, 25, 31-34, 43, 58-59, 67, 73-76, 79-80, and 84-86 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, and to include all of the limitations of the base claim and any intervening claims.

As suggested by the Examiner, the Applicant has amended claims 17-18, 25, 31-34, 43, 58-59, 67, 73-76, 79-80, and 84-86 to include all of the limitations of the base claims and any intervening claims. The Applicant respectfully submits that claims 17-18, 25, 31-34, 43, 58-59, 67, 73-76, 79-80, and 84-86 are therefore in condition for allowance.

The Examiner rejected claims 1-88 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

The Applicant has amended independent claims 1, 6, 37, 51 and 81 in accordance with the Examiner's recommendations such that independent claims 1, 6, 37, 51, and 81 now particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Applicant respectfully submits that independent claims 1, 6, 37, 51, and 81 are therefore in condition for allowance, and that all claims that depend from independent claims 1, 6, 37, 51, and 81 are likewise in condition for allowance.

**35 U.S.C. § 102(b)**

The Examiner rejected claims 1-16, 21-24, 29, 37-42, 47, 51-57, 63-66, 71, and 81-83 under 35 U.S.C. § 102(b) as being anticipated by Monroe *et al.* (U.S. Pat. 3,884,218).

The Applicant respectfully traverses the Examiner's rejection of claim 1, because U.S. '218 does not teach each and every feature of claim 1. For example: U.S. '218 does not teach *inter alia* monitoring at least one physiological characteristic of a sleeper, as in Applicant's claim 1.

Unlike Applicant's claim 1, U.S. '218 does not teach monitoring at least one physiological characteristic of a sleeper because U.S. '218 merely induces sleep, "wherein familiar, repetitive, pleasing sounds, are modulated by predetermined EEG sleep signals to produce an audio signal which induces various stages of sleep." Monroe *et al.* Column 1, lines 36-40.

In light of the foregoing, Applicant respectfully submits that claim 1 is in condition for allowance because U.S. '218 does not teach the inventor as set forth in claim 1 which includes monitoring at least one physiological characteristic of a sleeper. Claims 2-5 are likewise in condition for allowance because claims 2-5 depend from claim 1.

The Applicant respectfully traverses the Examiner's rejection of claim 6, because U.S. '218 does not teach each and every feature of claim 6. For example: U.S. '218 does not teach *inter alia* monitoring at least one physiological characteristic of a sleeper, as in Applicant's claim 6.

Unlike Applicant's claim 6, U.S. '218 does not teach the inventor as set forth in claim 6 which includes monitoring at least one physiological characteristic of a sleeper because U.S. '218 merely induces sleep, "wherein familiar, repetitive, pleasing sounds, are modulated by predetermined EEG sleep signals to produce an audio signal which induces various stages of sleep." Monroe *et al.* Column 1, lines 36-40.

In light of the foregoing, Applicant respectfully submits that claim 6 is in condition for allowance because U.S. '218 does not teach the inventor as set forth in claim 6 which includes monitoring at least one physiological characteristic of a sleeper. Claims 7-16, 21-24 and 29 are likewise in condition for allowance because claims 7-16, 21-24, and 29 depend from claim 6.

The Applicant respectfully traverses the Examiner's rejection of claim 37, because U.S. '218 does not teach each and every feature of claim 37. For example: U.S. '218 does not teach

*inter alia* monitoring at least one physiological characteristic of a sleeper, as in Applicant's claim 37.

Unlike Applicant's claim 37, U.S. '218 does not teach the inventor of claim 37 which includes monitoring at least one physiological characteristic of a sleeper because U.S. '218 merely induces sleep, "wherein familiar, repetitive, pleasing sounds, are modulated by predetermined EEG sleep signals to produce an audio signal which induces various stages of sleep." Monroe *et al.* Column 1, lines 36-40.

In light of the foregoing, Applicant respectfully submits that claim 37 is in condition for allowance because U.S. '218 does not teach the inventor of claim 37 which includes monitoring at least one physiological characteristic of a sleeper. Claims 38-42 and 47 are likewise in condition for allowance because claims 38-42 and 47 depend from claim 37.

The Applicant respectfully traverses the Examiner's rejection of claim 51, because U.S. '218 does not teach each and every feature of claim 51. For example: U.S. '218 does not teach *inter alia* a processor configured to receive input from a physiological characteristic monitor indicative of a first sleep stage of a sleeper, as in Applicant's claim 51.

Unlike Applicant's claim 51, U.S. '218 does not teach, *inter alia*, a processor configured to receive input from a physiological characteristic monitor indicative of a first sleep stage of a sleeper, because U.S. '218 merely induces sleep, "wherein familiar, repetitive, pleasing sounds, are modulated by predetermined EEG sleep signals to produce an audio signal which induces various stages of sleep." Monroe *et al.* Column 1, lines 36-40.

In light of the foregoing, Applicant respectfully submits that claim 51 is in condition for allowance because U.S. '218 does not teach, *inter alia*, a processor configured to receive input from a physiological characteristic monitor indicative of a first sleep stage of a sleeper. Claims 52-57, 63-66 and 71 are likewise in condition for allowance because claims 52-57, 63-66 and 71 depend from claim 51.

The Applicant respectfully traverses the Examiner's rejection of claim 81, because U.S. '218 does not teach, *inter alia*, each and every feature of claim 37. For example: U.S. '218 does not teach *inter alia* monitoring at least one physiological characteristic of a sleeper, as in Applicant's claim 81.

Unlike Applicant's claim 81, U.S. '218 does not teach, *inter alia*, monitoring at least one physiological characteristic of a sleeper because U.S. '218 merely induces sleep, "wherein

familiar, repetitive, pleasing sounds, are modulated by predetermined EEG sleep signals to produce an audio signal which induces various stages of sleep." Monroe *et al.* Column 1, lines 36-40.

In light of the foregoing, Applicant respectfully submits that claim 81 is in condition for allowance because U.S. '218 does not teach, inter alia, monitoring at least one physiological characteristic of a sleeper. Claims 82-83 are likewise in condition for allowance because claims 82-83 depend from claim 81.

**35 U.S.C. §103(a)**

The Examiner rejected claims 26-28, 30, 35-36, 44-46, 48-50, 62, 68-70, 72, 77-78, and 87-88 under 35 U.S.C. §103(a) as being unpatentable over Monroe *et al.* (U.S. Pat. 3,884,218) in view of Scarfoss, III (Pub. No. US 2003/0231495 A1).

The Applicant respectfully traverses the Examiner's rejection of claims 26-28, 30, and 35-36, and submit that claims 26-28, 30, and 35-36 are in condition for allowance for the same reason that independent claim 6 is in condition for allowance following the Examiner's 35 U.S.C. §102(b) and 35 U.S.C. § 112 rejection *supra*.

Applicant respectfully traverse the Examiner's rejection of claims 44-46 and 48-50, and submit that claims 44-46 and 48-50 are in condition for allowance for the same reason that independent claim 37 is in condition for allowance following the Examiner's 35 U.S.C. §102(b) and 35 U.S.C. § 112 rejection *supra*.

Applicant respectfully traverse the Examiner's rejection of claims 62, 68-70, 72, and 77-78, and submit that claims 62, 68-70, 72, and 77-78 are in condition for allowance for the same reason that independent claim 51 is in condition for allowance following the Examiner's 35 U.S.C. §102(b) and 35 U.S.C. § 112 rejection *supra*.

Applicant respectfully traverse the Examiner's rejection of claims 87-88 and submit that claims 87-88 are in condition for allowance for the same reason that independent claim 81 is in condition for allowance following the Examiner's 35 U.S.C. §102(b) and 35 U.S.C. § 112 rejection *supra*.

The Examiner rejected claims 19-20 and 60-61 under 35 U.S.C. §103(a) as being unpatentable over Monroe *et al.* (U.S. Pat. 3,884,218) in view of Monroe *et al.* (U.S. Pat. 5,356,368).

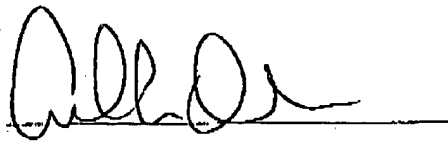
Applicant respectfully traverse the Examiner's rejection of claims 19-20, and submit that claims 19-20 are in condition for allowance for the same reason that independent claim 6 is in condition for allowance following the Examiner's 35 U.S.C. §102(b) and 35 U.S.C. § 112 rejection *supra*.

Applicant respectfully traverse the Examiner's rejection of claims 60-61, and submit that claims 60-61 are in condition for allowance for the same reason that independent claim 51 is in condition for allowance following the Examiner's 35 U.S.C. §102(b) and 35 U.S.C. § 112 rejection *supra*.

**CONCLUSION**

Based on the preceding arguments, Applicants respectfully believe that all pending claims and the entire application meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicants invites the Examiner to contact Applicants' representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account 19-0513.

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